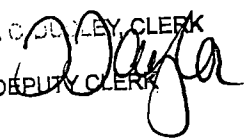


DEC 08 2015

JULIA C. JULY, CLERK  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

UNITED STATES OF AMERICA

Case No. 5:14-cr-00036-2

v.

MEMORANDUM OPINION

DONNA JEAN JENKINS,  
Petitioner.

By: Hon. Michael F. Urbanski  
United States District Judge

By its Order entered on October 29, 2015, the court notified petitioner of its intent to construe and address petitioner's "Notice of Motion" as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The Order advised petitioner to complete and return a form § 2255 motion if the "Notice of Motion" was intended to challenge the criminal judgment. See Castro v. United States, 540 U.S. 375, 383 (2003) (requiring the court to give petitioner an opportunity to elect whether a criminal motion should be addressed as § 2255 motion). The Order also notified petitioner that a failure to respond would result in the construed § 2255 motion being dismissed without prejudice.

Petitioner responded, objecting to the court considering the "Notice of Motion" as a § 2255 motion at this time. Accordingly, the court dismisses the conditionally filed § 2255 motion without prejudice to petitioner's ability to file another § 2255 motion, subject to the time limits of 28 U.S.C. § 2255(f). Based on the court's finding that petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

ENTER: This  day of December, 2015.



United States District Judge